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No. 58796-0-1

SUPREME COURT OF THE STATE OF WASHINGTON

CHADWICK FARMS OWNERS ASSOCIATION, a Washington nonprofit corporation,

Respondent,

v.

FHC, LLC, Washington limited liability company,

Petitioner,

v.

AMERICA 1ST ROOFING & BUILDERS, INC., a Washington corporation; CASCADE UTILITIES, INC., a Washington corporation; MILBRANDT ARCHITECTS, INC., P.S., a Washington corporation; PIERONI ENTERPRISE, INC., d/b/a PIERONI'S LANDSCAPE CONSTRUCTION, a Washington corporation; TIGHT IS RIGHT CONSTRUCTION, a Washington corporation; GUTTER KING, INC., a Washington corporation,

Respondents.

RESPONDENT MILBRANDT ARCHITECTS, INC., P.S.'S ANSWER TO FHC, LLC'S PETITION FOR REVIEW

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I. Identity of Respondent

Respondent Milbrandt Architects, Inc. P.S. ("Milbrandt"), a third-party defendant in the trial court, asks that the Petition for Review be denied.

II. Court of Appeals Decision

In its decision of June 18, 2007, the Court of Appeals, Division One, affirmed in part and reversed in part the orders of the King County Superior Court (Judge Richard A. Jones), including the September 30, 2005 order dismissing with prejudice all claims by Petitioner FHC, LLC against Milbrandt.

III. Statement of the Case

Cross-Appellant FHC, LLC ("FHC") was formed as a limited-liability company under Washington's Limited Liability Company Act, Chapter 25.15 of the Revised Code of Washington. It was sued by plaintiff Chadwick Farms Homeowners Association. FHC had been administratively dissolved by the Secretary of State on March 24, 2003, and its certificate of formation had been canceled two years later on March 24, 2005. On May 6, 2005, while in both a dissolved and canceled status, FHC filed a third-party complaint against Cross-Respondent Milbrandt and other third parties. The third-party complaint against Milbrandt was not served until May 12, 2005. Milbrandt is a

Washington corporation. After being served with the third-party complaint, Milbrandt moved for summary judgment pursuant to RCW 25.15.290(4), arguing that FHC lacked the legal capacity to prosecute claims against Milbrandt. On September 30, 2005, the Trial Court entered an order dismissing, with prejudice, all claims against Milbrandt. The Trial Court entered similar separate dismissal orders for each of the other third-party defendants on the same ground. FHC filed a Notice of Appeal as to these dismissals, but not until January 13, 2006.

While the appeal was pending with the Court of Appeals, the Washington Legislature amended the Limited Liability Company Act by adding section 25.15.303. Section 303 provides that the dissolution of a limited liability company does not impair remedies available *against* the LLC and provides that a dissolved LLC may defend such claims; it does not speak to whether an LLC that has been dissolved and canceled may prosecute claims on its own behalf:

> The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the limited liability

> company may be defended by the limited liability company in its own name.

R.C.W. 25.15.303. Also while the appeal was pending with the Court of Appeals, this Court issued its opinion in *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.* 158 Wn.2d 603, 146 P.3d 914 (2006).

In a decision dated June 18, 2007, the Court of Appeals held that the change to the Limited Liability Company Act applied to FHC, that the change was retroactive, and that the change did not bar Chadwick's complaint against FHC. As to FHC's claims against Milbrandt and the other third-party defendants, the Court of Appeals held that FHC's claims were barred because FHC did not assert them until after it was administratively dissolved and canceled. FHC now petitions this Court for review of the decision of the Court of Appeals.

IV. Argument

The Supreme Court will accept review only if the petition establishes that one of four grounds exists for doing so: 1) the Court of Appeals decision appealed from is in conflict with a decision of the Supreme Court; 2) the Court of Appeals decision appealed from is in conflict with a decision of another division of the Court of Appeals; 3) a significant question of law under the Constitution of the State of

Washington or of the United States is involved; or 4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b). Petitioner FHC does not contend that the first three grounds are present here. There is no conflict with a decision of the Supreme Court or another division of the Court of Appeals. There is no question of law under the Constitution of the State of Washington or of the United States. The only ground that Petitioner FHC appears to invoke is the last.

Petitioner FHC states at one point that the petition for review should be accepted "because the issues presented are of public interest to all who deal with the LLC form to conduct business within the State of Washington." Pet. At 5. Rather than explaining *how* or *why* the issues are of public interest, however, Petitioner FHC then goes on to simply restate arguments that it made to the Court of Appeals. FHC has not adequately shown that the Court should accept discretionary review of the Court of Appeals decision. The Court will only accept a petition for review if the petition "involves an issue of *substantial* public interest that should be determined by the Supreme Court." RAP 13.4(b). Petitioner FHC only states (without argument) that the issues are of "public

interest"; it does not contend that they are of *substantial* public interest, as required.

Moreover, the petition does not involve issues of substantial public interest that should be determined by this Court. Most of the issues that FHC raises in its petition concern the claims by Chadwick against FHC, to which Milbrandt is not a party. In its last issue for review, FHC argues that its claims against Milbrandt and the other third-party defendants should not have been dismissed. Pet. At 21-22. The issue that FHC raises is whether an LLC that has been administratively dissolved and canceled is then permitted to start new legal claims against other persons without first reinstating itself as an active business entity. The Supreme Court has found that issues of "substantial public interest include procedures that could potentially affect all criminal sentencing proceedings in a county (*State v. Watson*, 155 Wn.2d 574 (2005)); questions about whether a prosecuting attorney may offer an inducement to a defense witness not to testify at a criminal proceeding (*In re Discipline of Bonet*, 144 Wn.2d 502 (2001); and a county's procedures for empaneling juries (*State v. Tingdale*, 117 Wn.2d 595 (1991)). In contrast, here the Court of Appeals decision here could only affect administratively dissolved and purposefully canceled LLCs that chose

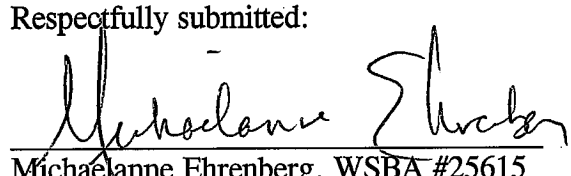
not to reinstate themselves before instituting new legal claims against other persons. This is not an issue of "substantial public interest" to warrant review by this Court at this time. FHC's petition should therefore be denied.

In addition, Milbrandt incorporates by reference all arguments made by all other third-party defendants against whom FHC asserted claims in this litigation.

V. Conclusion

Because the petition does not meet any of the four required considerations for review, the Court should deny the petition and should not accept discretionary review of the decision of the Court of Appeals.

Respectfully submitted:



Michaelanne Ehrenberg, WSBA #25615
Attorneys for Respondent Milbrandt Architects, Inc., P.S.

Appendix

A. Decision of the Court of Appeals

B. R.C.W. 25.15.303

EXHIBIT A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CHADWICK FARMS OWNERS ASSOCIATION, a Washington nonprofit corporation, Appellant, v. FHC, LLC, a Washington limited liability company, Respondent/Cross-Appellant, v. AMERICA 1ST ROOFING & BUILDERS, INC., a Washington corporation; CASCADE UTILITIES, INC., a Washington corporation; MILBRANDT ARCHITECTS, INC., P.S., a Washington corporation; PIERONI ENTERPRISE, INC., d/b/a PIERONI'S LANDSCAPE CONSTRUCTION, a Washington corporation; TIGHT IS RIGHT CONSTRUCTION, a Washington corporation; GUTTER KING, INC., a Washington corporation, Third Party Defendants/Cross-Respondents.	)	No. 58796-0-I DIVISION ONE PUBLISHED OPINION FILED: June 18, 2007

GROSSE, J – A 2006 amendment to the statutory framework to limited liability companies providing a three-year survival period within which to commence actions against a dissolved limited liability company (LLC), applies retroactively and permits actions against an LLC even when that company's certificate of formation has been cancelled. The amendment only applies to actions against the company and not to

actions brought by a company. Thus, FHC, a dissolved and cancelled LLC, lacks standing to prosecute a claim for its own benefit.[1]

FACTS

FHC was formed as a limited liability company on December 23, 1999. Its purpose was to construct the Chadwick Farms condominiums. Once the project was completed, FHC ceased operations. The company did not submit the required annual report and renewal fee to the secretary of state. After providing the required notice to the company, the secretary issued a Certificate of Administrative Dissolution on March 24, 2003.

One August 18, 2004, Chadwick Farms Homeowners Association (Chadwick) brought suit against FHC alleging that it was responsible for a number of construction defects. Seven months later, on March 24, 2005, the secretary cancelled FHC's certificate of formation because two years had passed since the secretary issued the notice of dissolution to FHC.

In May 2005, FHC filed third party claims against several subcontractors. Yet, on August 24, 2005, FHC moved for summary judgment to dismiss Chadwick's claims on the grounds that FHC was no longer a legal entity. Chadwick moved to amend the complaint to include specific members of the LLC. The trial court granted summary

[1] This court has before it three cases dealing with limited liability companies and their capacity to sue or be sued under chapter 25.15 RCW. While this case was pending, and after oral argument in Roosevelt v. Grateful Siding, No. 56879-5-I, the Supreme Court issued its decision in Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 158 Wn.2d 603, 146 P.3d 914 (2006). This court stayed its decision in Roosevelt and linked this case with Colonial Development v. Emily Lane, No. 58825-7-I for purposes of oral argument and decision. The decisions in Roosevelt and Emily Lane will be filed contemporaneously with this decision.

judgment to FHC. For the same reasons, the trial court dismissed FHC's third party claims against the subcontractors. The trial court did not specifically address Chadwick's motion to amend the complaint.

ANALYSIS

The Washington Limited Liability Companies Act (LLCA)[2] governs the formation, operation, and dissolution of limited liability companies. Unlike the statutes governing business corporations, the LLCA did not provide for survival of a claim after the company's affairs wound up and a certificate of cancellation had been filed. The legislature recently amended the Act to provide for a three-year period after dissolution within which to commence actions against a dissolved limited liability company.[3]

In its amicus brief, the Washington State Bar Association (WSBA) summarizes the genesis of LLCs ably and succinctly as follows:

> LLCs are recent legal constructs, with a majority of states having only enacted LLC legislation in the 1990s. Washington's Act took effect on October 1, 1994, and Washington case law construing the Act is sparse. "Since limited liability companies have only recently become popular, the law is still evolving." Unhelpfully, courts and scholars routinely comment that LLCs share some qualities of corporations and other qualities of partnerships; they cite by analogy to state corporation acts, to state partnership acts, or to the common law, often without meaningful explanation. From the WSBA's perspective, the only relatively sure footing here is the language of the Act itself. The LLC is a creature of statute, not of common law, and our courts of appeals are expert at construing statutes. That is the only way to unravel this puzzle, even if the solution is not fully satisfying.[4]

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[2] Ch. 25.15 RCW; Laws of 1994, ch. 211, § 101.
[3] RCW 25.15.303.
[4] Washington State Bar Association Amicus Brief at 6-7 (citations omitted) (emphasis in original).

Although an LLC can be dissolved in several ways, only administrative dissolution is relevant here.[5] The secretary of state can administratively dissolve a limited liability company if the company fails to pay its license fees or fails to file its required annual reports.[6] Once the secretary gives notice that administrative dissolution is pending, the company has 60 days to correct the grounds for dissolution, and, if it fails to do so, the company is dissolved.[7] Then, if the company does not apply for reinstatement within two years of the administrative dissolution, the secretary of state "shall" cancel the certificate of formation.[8] Once cancelled, an LLC is no longer a separate legal entity.[9] That is what occurred here.

2006 Amendment of RCW 25.15.303

Effective May 6, 2006, the legislature amended the Act[10] by adding the following section:

> The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the

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[5] RCW 25.15.270.
[6] RCW 25.15.280.
[7] RCW 25.15.285(2).
[8] RCW 25.15.290(4) provides:

> If an application for reinstatement is not made within the two-year period set forth in subsection (1) of this section, or if the application made within this period is not granted, the secretary of state shall cancel the limited liability company's certificate of formation.

(Emphasis added).
[9] RCW 25.15.070(2)(c) provides:

> A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

[10] RCW 25.15.303 (amended by Laws of 2006, ch. 325, § 1) (emphasis added).

> limited liability company may be defended by the limited liability company in its own name.

Statutory amendments are generally prospective, but can act retroactively if the legislature so intended or the amendment is remedial or curative.[11] This provision was enacted at the same time as a similar amendment to the Business Corporation Act (BCA).[12] That amendatory Act provides a maximum three-year survival period for claims against business corporations.[13] The legislative histories of both survival statutes indicate that these amendments were passed to address the result of this court's opinion in Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.[14] In Ballard Square, this court held that absent a survival statute claims against a corporation arising after the dissolution of the corporation abate.[15]

In its decision in Ballard Square, the Supreme Court affirmed this court's ruling, but on different grounds.[16] The court held that at the time the homeowners commenced their suit, claims brought after dissolution could be brought against a dissolved corporation, subject to the time limitations contained in any applicable statute of limitations. However, the legislature amended the BCA in 2006 requiring that actions be

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[11] 1000 Virginia Ltd. P'ship v. Vertects, 158 Wn.2d 566, 584, 146 P.3d 423 (2006) (citing McGee Guest Home, Inc. v. Department of Soc. & Health Servs., 142 Wn.2d 316, 324-25, 12 P.3d 144 (2000)).
[12] Ch. 23B.14 RCW; S.B. 6596, 59th Leg., Reg. Sess. (Wash. 2006).
[13] RCW 23B.14.340 provides a two-year survival period for claims against a corporation dissolved prior to June 7, 2006, and a three-year period for claims against corporations dissolved on or after June 7, 2006.
[14] Ballard Square, 126 Wn. App. 285, 195, 196, 108 P.3d 818, review granted, 155 Wn.2d 1024 (2005).
[15] See H.B. *Rep.* on S.B. 6531, at 3, 59th Leg., Reg. Sess. (Wash. 2006); H.B. *Rep.* on S.B. 6596, at 7, 59th Leg., Reg. Sess. (Wash. 2006).
[16] Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 158 Wn.2d 603, 146 P.3d 914 (2006).

brought against the corporation within two years of its dissolution. That amendment was found to be retroactive, precluding the Ballard Square Homeowners Association from bringing an action.

The amendment in Ballard Square is analogous to the statutory amendment to the LLCA. The statutes were sponsored by the same legislators and were enacted in tandem. Indeed, the statutes were signed into law and became effective on the same day.[17] Additionally, the legislature enacted both statutes in reaction to the Court of Appeals decision in Ballard Square.[18]

The provision here is remedial and curative. There is no basis to distinguish the remedial and curative nature of this provision from the similar provision in the BCA. Like the BCA amendment, the purpose of the LLCA amendment was to provide for survival of claims after a company dissolves. The House Bill Report shows that the legislature identified the problem:

> The law governing LLCs has no express provision regarding the preservation of remedies or causes of actions following dissolution of the business entity. There is an implicit recognition of the preservation of at least an already filed claim during the wind up period following dissolution, since the person winding up the affairs is authorized to defend suits against the LLC. However, there is no provision regarding the preservation of claims following cancellation of the certificate of formation.[19]

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[17] H.B. *Rep.* on S.B. 6531, at 3, 59th Leg., Reg. Sess. (Wash. 2006); H.B. *Rep.* on S.B. 6596, at 7, 59th Leg., Reg. Sess. (Wash. 2006).

[18] The presumption that a statute applies prospectively is overcome when it is remedial in nature or the legislature provides for retroactive application. A remedial statute is one which relates to practice, procedures and remedies and can be applied retroactively if it does not affect a substantive or vested right. American Discount Corp. v. Shepherd, No. 77974-1, 2007 Wash. LEXIS 292, at *8 (Apr. 19, 2007) (citing State v. McClendon, 131 Wn.2d 853, 861, 935 P.2d 1334 (1997)).

[19] H.B. *Rep.* on S.B. 6531, at 2, 59th Leg., Reg. Sess. (Wash. 2006).

The testimony adduced in support of the bill indicated that its raison d'etre was to address the result reached in this court's Ballard Square decision that left homeowners without a remedy for claims against a dissolved corporation. In the plain language of the statute, the amendment was passed to address the survival of claims following dissolution.[20] As seen in the legislative history, the amendment was also crafted to remove any incentive for LLCs to dissolve immediately after a project simply to cut off claims prematurely. And finally, the bill relates to remedies by reviewing the brief description contained in SB 6531—"[p]reserving remedies when limited liability companies dissolve."[21] As noted in In re Personal Restraint of Matteson:[22]

> "'When an amendment clarifies existing law and where that amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial and retroactive. This is particularly so where an amendment is enacted during a controversy regarding the meaning of the law.'"

The Supreme Court's analysis is directly applicable. The 2006 amendment is retroactive.

FHC argues that even if the 2006 amendment is retroactive, it is irrelevant as the provision does not deal with claims against a cancelled company. FHC argues that its certificate was cancelled by operation of law and at that point the company ceased to exist as a separate legal entity. Thus, FHC contends, Chadwick's claims against it abated as there is no provision to continue an action against a cancelled limited liability company.

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[20] S.B. 6531, at 3, 59th Leg., Reg. Sess. (Wash. 2006).
[21] S.B. 6531, 59th Leg. Reg. Sess. (Wash. 2006).
[22] Matteson, 142 Wn.2d 298, 308, 12 P.3d 585 (2000) (quoting Tomlinson v. Clarke, 118 Wn.2d 498, 510-11, 825 P.2d 706 (1992)).

FHC relies upon RCW 25.15.070(2)(c):[23]

> A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

And to further support its argument, FHC relies upon the winding up provisions in the Act.[24]

A company that has been dissolved and is winding up is required to make reasonable provision to pay all known claims and obligations.[25] Upon dissolution of an LLC and until the filing of a certificate of cancellation as provided in RCW 25.15.080, the persons winding up an LLC may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits.[26] And, until a certificate of cancellation has been filed, the persons winding up the company's business may "make reasonable provision for the limited liability company's liabilities."[27]

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[23] (Emphasis added).
[24] See discussion contained in Roosevelt v. Grateful Siding, No. 56879-5-I (June 18, 2007) regarding the statute's winding up process.
[25] RCW 25.15.300(2)
[26] RCW 25.15.295(2).
[27] RCW 25.15.295 provides:

> (1) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or required to be made, by all members, or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs. The superior courts, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his or her legal representative or assignee, and in connection therewith, may appoint a receiver.

FHC's argument continues. RCW 25.15.300(2) provides that claims accruing after a limited liability company dissolves and begins to wind up its affairs must be provided for if known by the company. But, once the certificate of formation has been cancelled, the company is no longer a legal entity. Generally then, persons winding up a company's affairs would not file a certificate of cancellation until the company's affairs were provided for, since persons winding up a company's affairs are not personally liable to claimants if they make provisions for the company's known liabilities during dissolution. See RCW 25.15.300(2) (members are not personally liable for any unresolved claims if they've complied with the directives contained there). While we can agree with this to some extent, it certainly does not encompass what transpired here or in similar cases now pending in this court. Here, there was no winding up. The cancellation was administrative.

We do, however, believe that the survival provision at issue applies to dissolved LLCs whether or not a certificate of cancellation was issued pursuant to RCW 25.15.080. To hold otherwise would render the 2006 amendment inoperative as it would link the survival of claims not to a specific survival period, but rather to the actions

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(2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company.

or, as in this case, non-action of a company.[28] The legislature's purpose in enacting the survival provision was to provide remedies for parties injured by acts of a limited liability company and to provide an incentive for the limited liability company to act in good faith. The plain language of the statute provides that an action may lie for three years after a company is dissolved. Here, it was non-action by the LLC that resulted in cancellation. Addressing similar arguments in Ballard Square, the Supreme Court found that the survival statute existed "apart from the winding up process."[29]

And, while we are mindful of the differences between relevant provisions of the BCA and the LLCA, particularly the two-step process of dissolution followed by cancellation in the latter, we cannot think the legislature was anything more than inartful in choosing the term dissolution as the reference for its remedial measure in 2006. To construe the 2006 amendment otherwise would nullify its stated purpose and put the legislature in the position of having enacted a largely useless statute since a dissolved LLC could in the process of winding up, sue and defend before the amendment.

Thus, we hold that Chadwick had three years within which to bring its cause of action.

FHC Claims Against its Subcontractors

FHC filed third party complaints against its subcontractors after it was administratively dissolved and cancelled. The 2006 amendment for survival of claims only applies to actions which are brought against a company. FHC's failure to reinstate itself is fatal to its pursuit of any claim against the subcontractors. Once the secretary of

[28] See Colonial Development v. Emily Lane, No. 58825-7-I (June 18, 2007) (where similar result was reached by this court where the members dissolve and cancel the LLC).
[29] Ballard Square, 158 Wn.2d at 609.

state cancelled FHC's certificate of formation, FHC lacks standing to prosecute claims against the subcontractors. The Act mandates an administratively dissolved corporation to wind up its affairs by "[t]he expiration of two years after the effective date of dissolution under RCW 25.15.285 without the reinstatement of the limited liability company."[30]

Chadwick filed its claim against FHC some seven months before the secretary of state cancelled FHC's certificate of formation. FHC could have at any time during those seven months reinstated itself to permit it to properly pursue the winding up process. It failed to do so.

Amended Complaint

The trial court did not rule on Chadwick's motion to amend its complaint to include a company member and manager as defendants for their failure to properly wind up FHC's affairs. Leave to amend a pleading should be "freely given when justice so requires."[31] This rule serves to "facilitate proper decisions on the merits, to provide parties with adequate notice of the basis for claims and defenses asserted against them, and to allow amendment of the pleadings except where amendment would result in prejudice to the opposing party."[32] Chadwick alleges that the duty to properly wind up the company's affairs is required by statute:

> **[RCW] 25.15.300 Distribution of assets**
>
> (1) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

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[30] RCW 25.15.270(6).
[31] CR 15(a).
[32] Wilson v. Horsley, 137 Wn.2d 500, 505, 974 P.2d 316 (1999).

> (a) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under RCW 25.15.215 or 25.15.230;
>
> (b) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under RCW 25.15.215 or 25.15.230; and
>
> (c) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.
>
> (2) A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

Chadwick argues that implicit in this proviso is the converse proposition. That is, any person winding up a limited liability company's affairs who has not complied with RCW 25.15.300 is personally liable to the claimants. We agree that this could be the case, depending on a full examination of the facts.

While cancellation marks the end of a limited liability company as a separate legal entity, it does not necessarily follow that claims against the LLC or its managers or

members also abate.[33] Chadwick should have been permitted to amend its complaint. Thus, the trial court's failure to do so was an abuse of its discretion.

The trial court is reversed in part and affirmed in part. We remand for further proceedings in accord with this decision.

Grosse, J

WE CONCUR:

Edlington, J. Baker, J.

[33] For example, when a merger involving a limited liability company occurs, RCW 15.15.410(1)(a)(d) provides that any pending action against the merged entity may be "continued as if the merger did not occur . . . ." This is true even though the "separate existence of [a merged LLC] ceases." RCW 25.15.410(1)(a). Such provisions would be meaningless if cancellation abated pending claims.

EXHIBIT B

RCW 25.15.303

Remedies available after dissolution.

The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the limited liability company may be defended by the limited liability company in its own name.

[2006 c 325 § 1.]

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I caused to be served this RESPONDENT MILBRANDT ARCHITECTS, INC., P.S.'S ANSWER TO FHC, LLC'S PETITION FOR REVIEW on the following individuals in the manner indicated:

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DATED this 14th day of August, 2007 at Seattle, Washington

Rondi Moreau

Rondi Moreau